

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

NO. CR.S-05-0383 WBS

Plaintiff,

v.

ORDER RE MOTION FOR
APPOINTMENT OF COUNSEL

FRANCISCO MIGUEL ANGEL
NAJERA-GORDILLO,

Defendant.

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On October 17, 2006, defendant Francisco Miguel Angel Najera-Gordillo was sentenced by U.S. Senior District Judge William B. Shubb to the custody of the U.S. Bureau of Prisons for a term of imprisonment of 292 months. At that time defendant Najera-Gordillo was represented by retained counsel of record, Paul Nathan Puri of Paul Puri and Associates. On October 24, 2006, a notice of appeal was filed on the defendant's behalf listing attorney Puri as counsel for appellant. (Court Doc. No. 47.) On October 31, 2006, defendant Najera-Gordillo, purportedly appearing pro se, filed a motion for appointment of counsel and financial affidavit. (Court Doc. No. 49.)

1 In the motion defendant Najera-Gordillo reported that he could no
2 longer afford private counsel and requested that the court appoint
3 counsel to represent him on appeal. (Id.) On November 2, 2006, the
4 assigned district judge referred the motion for appointment of
5 counsel to a Magistrate Judge "for such action as is appropriate."
6 (Court Doc. No. 51.) The pending motion has been brought to the
7 attention of the undersigned as the designated Duty Magistrate Judge
8 for the month of November.

9 Defendant Najera-Gordillo's motion for appointment of
10 counsel will be denied without prejudice at this time. Ninth Circuit
11 Court of Appeals Local Rule 4-1 addresses questions regarding counsel
12 in criminal appeals and provides in relevant part as follows:

13 **(c) Withdrawal of Counsel After Filing the Notice**
14 **of Appeal**

15 A motion to withdraw as counsel on appeal after
16 the filing of the notice of appeal, where counsel
17 is retained in a criminal case or appointed under
18 the Criminal Justice Act, shall be filed with the
19 Clerk of this court within twenty-one (21) days
20 after the filing of the notice of appeal and
21 shall be accompanied by a statement of reasons
22 and:

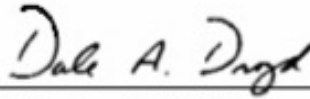
- 23 (1) A substitution of counsel which indicates
24 that new counsel has been retained to represent
25 defendant; or
26 (2) A motion by retained counsel for leave to
proceed in forma pauperis and for appointment of
counsel under the Criminal Justice Act, supported
by a completed financial affidavit (CJA Form 23)
or;
(3) A motion by appointed counsel to be relieved
and for appointment of substitute counsel or;
(4) A motion by defendant to proceed pro se; or
(5) An affidavit or signed statement from the
defendant showing that the defendant has been
advised of his or her rights with regard to the
appeal and expressly stating that the defendant
wishes to dismiss the appeal voluntarily.
Any motion filed pursuant to this section shall

1 be served on defendant; the proof of service
2 shall include defendant's current address.

3 Pursuant to this rule, defendant Najera-Gordillo's retained
4 counsel of record must file a motion to withdraw as counsel on appeal
5 with the Ninth Circuit Court of Appeals. Attorney Puri is directed
6 to comply with the provisions of Circuit Rule 4-1(c). Until and
7 unless a motion to withdraw is granted by the Circuit Court, attorney
8 Puri remains counsel of record on behalf of defendant Najera-
9 Gordillo. The Clerk of the Court is directed to serve this order on
10 attorney Puri, counsel for the government and defendant Najera-
11 Gordillo.

12 IT IS SO ORDERED.

13 DATED: November 13, 2006.

14 

15 DALE A. DROZD
16 UNITED STATES MAGISTRATE JUDGE

17 DAD:lg
18 Ddadl/orders.criminal/najeragordillo.counsel
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